

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 5084 of 1986

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

-
1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the Judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

SENDHAJI N KOLI
VERSUS
COLLECTOR, BANASKANTHA

Appearance:

MS KUSUM M SHAH for the Petitioner
MR SK PATEL for Respondents No. 1, 2, 3 and 7
None present for other Respondents

CORAM : MR JUSTICE S.K. KESHOTE
Date of Decision : 15/10/1999

C.A.V. JUDGMENT

1. Heard the learned counsel for the petitioners

and the respondents. The petitioner No.1 has expired and to bring his heirs and legal representatives on the record, a civil application has been filed which has been granted on 1-8-1999. Office is directed to make necessary correction in the cause title of this special civil application, which has not been made so far.

2. In this special civil application, challenge has been made by the petitioners to the order of the Secretary, Revenue Department (Appeals), Government of Gujarat, annexure H dated 3-1-1986.

3. It is not in dispute that the land admeasuring 10 acres of Survey No.262/8 and 5 acres of Survey No.262/11 of Village Bachalva Taluka Deesa was purchased by the petitioners under a registered document on 11-5-1981 for a consideration of Rs.20,000/-.

4. Learned counsel for the petitioners does not dispute that the provisions of Section 73-AA was inserted in the Bombay Land Revenue Code on 1-2-1981. All the authorities below concurrently held that this sale has been made in violation of the provisions of section 73-AA of the Land Revenue Code.

5. Learned counsel for the petitioners contended that this contravention is not of a substantial nature which justifies the resumption of land to the Government. It has next been contended that the action for resumption of land in dispute has been taken after considerable delay and on this ground, this action deserves to be quashed and set aside. In support of this contention, reliance has been placed on the decision of this court in the case of Patel Maganbhai K. vs. B.P. Vasava reported in 1998 (2) G.L.R. 961. Lastly, it is contended that the petitioners belong to Baxi Panch and they are cultivating this land for last more than 30 years and at this stage if they are dispossessed from the land they will suffer heavily and will be rendered landless and will not have any source of livelihood. Carrying this contention further, the counsel for the petitioners contended that it is a case where the original holders of this land have not made any complaint in respect of the sale.

6. It is not in dispute that before selling of this land to the petitioners under a registered document, the permission of competent authority has not been taken though the vendors were belonging to the category of tribals. It is also not in dispute that this land of new and restricted impartible tenure was allotted to

vendors as they were landless tribals. Even if earlier the petitioners continued to be in possession of this land merely on this ground this inherent illegality in this transaction cannot be overlooked. However, if the lands of tribals are to be transferred in this way and manner then the purpose and object for which this provision has been inserted in the Act itself will be frustrated and will become nugatory. The object and purpose of this provision is to protect the tribals from being exploited by other persons and in this case, this provision has clearly been violated. It is true that the vendors have not made any complaint but it is hardly of any substance and relevance. These are the oppressed class of persons and knowing of these things and more so that they are being exploited, this provision has been inserted and only on this technical ground if reliefs are being granted by this court then this provision will be rendered totally ineffective and unworkable. Learned counsel for the petitioners though raised a contention that it is not a void transaction and it is only voidable but this larger issue I do not consider it to be appropriate to decide in this case as all the three authorities concurrently decided against the petitioners and I do not find any illegality in their approach more so any error apparent on the face of the order of the State Government which calls for the interference of this Court under Article 227 of the Constitution of India.

7. The decision on which reliance has been placed by the learned counsel for the petitioners is hardly of any help to her in this case. There in the peculiar facts of that case namely the delayed action taken and as a result thereof the petitioners therein have made improvement in the land by spending huge amount and they have been put in an irretrievable position the court has made appropriate order and given direction to the respondents to consider the case for grant of ex post-facto sanction of the sale of the land therein. Here it is not the case. There is not any registered document and secondly the petitioners have not made out a case of the nature where they have been put in an irretrievable position because of this delayed action. In the special civil application, the petitioners stated that they have constructed a pucca well and engine room and spent about Rs.30,000/- to make the land cultivable but in support of these averments I do not find any material or evidence on the record. Even in the affidavit, this para-5 is verified as to be true to their knowledge, information and belief. These are the matters for which the petitioners could have produced

the evidence but that has not been produced and as such it is difficult to believe the same what to say to accept it. The plea of delay has been taken but in this case it cannot be taken to be fatal to the action taken by the respondents. Notice has been given on 1-2-1984 and in the facts of this case and coupled with the fact that all the three authorities below have considered it to be a serious violation of the provisions of section 73-AA of the Code, these proceedings cannot be quashed and set aside on this ground also.

8. I do not find any merits in this special civil application and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated. No order as to costs.

zgs/-